

CHAPTER XI
PARTNERSHIP CONVEYANCES



STANDARD 11.1

**CONVEYANCE OF REAL PROPERTY
HELD IN PARTNERSHIP NAME**

STANDARD: REAL PROPERTY ACQUIRED IN THE NAME OF A PARTNERSHIP MAY BE CONVEYED ONLY IN THE PARTNERSHIP NAME.

Problem A: Blackacre was deeded to Eagle Company, a Michigan co-partnership. Later, a deed of Blackacre was given by Eagle Company, a co-partnership, by Sam Phillips and James Peters, the sole co-partners, to George Williams. Did Williams acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Blackacre was deeded to Eagle Company, a Michigan co-partnership consisting of Sam Phillips and James Peters. Later, a deed of Blackacre was given by Phillips and Peters to George Williams. Did Williams acquire marketable title to Blackacre?

Answer: No.

Authorities: MCL 449.8, 449.10. *Scheurman v Farbman*, 245 Mich 688, 224 NW 604 (1929).

Comment: This Standard applies also to a conveyance of real property held in the name of a limited partnership.

STANDARD 11.2

NO DOWER IN PARTNERSHIP REAL PROPERTY

STANDARD: THERE IS NO DOWER IN PARTNERSHIP REAL PROPERTY.

Problem A: Blackacre was deeded to Eagle Company, a Michigan co-partnership composed of Sam Phillips and James Peters, who were married during the entire time that Eagle Company owned Blackacre. Later, Eagle Company conveyed Blackacre to George Williams by a deed executed by Peters, who had authority to convey real property owned by Eagle Company. Did Williams acquire title to Blackacre free of any dower of the wives of Phillips and Peters?

Answer: Yes.

Problem B: Blackacre was deeded to Sam Phillips and James Peters, co-partners, doing business as Eagle Company, a Michigan co-partnership. Phillips and Peters were married during the entire time that they owned Blackacre as co-partners of Eagle Company. Later, Phillips and Peters, co-partners, doing business as Eagle Company, executed a deed of Blackacre to George Williams. The wives of Phillips and Peters did not sign the deed. Did Williams acquire title to Blackacre free of any dower of the wives of Phillips and Peters?

Answer: Yes.

Authorities: MCL 449.10 and 449.25. *Scheurman v Farbman*, 245 Mich 688, 224 NW 604 (1929).

Comment: This Standard applies also to real property held in the name of a limited partnership.

STANDARD 11.3

CONVEYANCE OF CO-PARTNERSHIP REAL PROPERTY BEFORE DISSOLUTION

STANDARD: A CONVEYANCE OF CO-PARTNERSHIP REAL PROPERTY BEFORE PARTNERSHIP DISSOLUTION EXECUTED IN THE PARTNERSHIP NAME IS BINDING UPON THE PARTNERSHIP IF:

(A) EXECUTED BY ALL PARTNERS; OR

(B) EXECUTED BY ONE OR MORE BUT LESS THAN ALL PARTNERS; AND:

(1) THE EXECUTING PARTNER OR PARTNERS HAVE EXPRESS AUTHORITY TO MAKE THE CONVEYANCE; OR

(2) THE CONVEYANCE APPARENTLY CARRIES ON IN THE USUAL WAY THE BUSINESS OF THE PARTNERSHIP AND THE GRANTEE DOES NOT HAVE KNOWLEDGE THAT THE EXECUTING PARTNER OR PARTNERS ARE NOT AUTHORIZED TO MAKE THE CONVEYANCE; OR

(3) THE CONVEYANCE IS AUTHORIZED OR RATIFIED BY ALL OF THE OTHER PARTNERS.

Problem A: Blackacre, a vacant lot, was owned by Eagle Company, a Michigan co-partnership engaged in the business of developing and selling real property. Blackacre was conveyed to George Williams by a deed signed on behalf of Eagle by James Smith, a partner of Eagle. Smith was not authorized to sign the deed on behalf of Eagle, but Williams did not have knowledge of this fact. Did Williams acquire marketable title to Blackacre?

Answer: Yes. Because the conveyance apparently carried on Eagle's real property development business in the usual way and Williams did

not know of Smith's lack of authority, the conveyance is binding upon Eagle.

Problem B: Same facts as in Problem A, except that Williams knew the Eagle partnership agreement required that all real property conveyances made by Eagle be executed by all of the partners. Did Williams acquire marketable title to Blackacre?

Answer: No. Because Williams had knowledge of Smith's lack of authority to make the conveyance, the conveyance is voidable by Eagle.

Problem C: Whiteacre was owned by Falcon Company, a Michigan co-partnership engaged in the retail furniture business. Whiteacre was conveyed to John Jones by a deed signed on behalf of Falcon by Robert Smith, a partner of Falcon. Jones made no inquiry as to Smith's authority to make the conveyance on behalf of Falcon. The Falcon partnership agreement required that all real property conveyances be approved in writing by all of the partners. The approvals were not obtained. Did Jones acquire marketable title to Whiteacre?

Answer: No. Because the conveyance did not apparently carry on Falcon's retail furniture business in the usual way and the conveyance was not authorized by all partners, the conveyance is voidable by Falcon.

Problem D: Same facts as in Problem C, except that the Falcon partnership agreement provided that any one partner of Falcon was authorized to sign and deliver a deed conveying title to partnership real property. Did Jones acquire marketable title to Whiteacre?

Answer: Yes.

Problem E: Greenacre was owned by Hawk Company, a Michigan co-partnership. Greenacre was conveyed to Wanda West by a deed signed on behalf of Hawk by Edna East, a partner of Hawk. West knew that East lacked authority to make the conveyance on behalf of Hawk. West subsequently deeded Greenacre to Sandra South. South paid fair value for Greenacre and had no knowledge of East's lack of authority. Did South acquire marketable title to Greenacre?

Answer: Yes. South was a bona fide purchaser for value without knowledge of East's lack of authority. Therefore, the original conveyance is not voidable by Hawk as against South.

Authorities: MCL 449.9 and 449.10. *Moran v Palmer* 13 Mich 367 (1865); *Back-*

owski v Solecki, 112 Mich App 401, 316 NW2d 434 (1982); *Omnicom v Giannetti Investment*, 221 Mich App 341, 561 NW2d 138 (1997). See also, *City Nat'l Bank of Detroit v Westland Towers Apartments*, 107 Mich App 213, 309 NW2d 209 (1981), *rev'd in part on other grounds and remanded*; 413 Mich 938, 320 NW2d 881, *aff'd judgment on remand*; 152 Mich App 136, 393 NW2d 554.

Comment: A conveyance not meeting the test of this Standard might nevertheless be binding upon the partnership under theories of estoppel or implied authority. See, e.g., *Moran v Palmer*, *supra*.

STANDARD 11.4

CONVEYANCE OF PARTNERSHIP REAL PROPERTY AFTER DEATH OF ONE OR MORE PARTNERS

STANDARD: AFTER THE DEATH OF A PARTNER, PARTNERSHIP REAL PROPERTY MAY BE CONVEYED BY THE SURVIVING PARTNER OR PARTNERS. AFTER THE DEATH OF THE LAST SURVIVING PARTNER, PARTNERSHIP REAL PROPERTY MAY BE CONVEYED BY THE LEGAL REPRESENTATIVE OF THE LAST SURVIVING PARTNER.

Problem A: Blackacre was owned by Eagle Company, a Michigan co-partnership composed of Sam Phillip, James Smith and John Pierce. Phillip died. Later, Blackacre was deeded by Eagle Company, a Michigan co-partnership, by Smith and Pierce, surviving partners, to George Williams. Did Williams acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Blackacre was owned by Eagle Company, a Michigan co-partnership composed of Sam Phillip and James Smith. First Phillip, then Smith, died. Later, Blackacre was deeded to George Williams by Eagle Company, a Michigan co-partnership, by Harry Ross, executor under Smith's will. Did Williams acquire marketable title to Blackacre?

Answer: Yes.

Problem C: Blackacre was owned by Eagle Company, a Michigan co-partnership composed of Sam Phillip and James Smith. Phillip died. The administrator of Phillip's estate included Blackacre in the inventory of the estate assets, and was authorized by the probate court to sell the estate's interest in Blackacre. The administrator conveyed Blackacre to George Williams. Did Williams acquire marketable title to any interest in Blackacre?

Answer: No. Partnership assets are to be administered by the surviving partner(s) and not through a decedent's estate, except the estate of

the last partner to die. Accordingly, Williams could acquire title to Blackacre only by a deed from Eagle Company as grantor and signed by Smith as surviving partner.

Authorities: MCL 449.25 and 449.37. *Dwyer v Bohan*, 214 Mich 290, 183 NW 40 (1921); *Kent Probate Judge v American Employers Insurance Co*, 283 Mich 328, 278 NW 85 (1938); *Grigg v Hanna*, 283 Mich 443, 278 NW 125 (1938); *Taylor v Lint*, 338 Mich 673, 62 NW2d 453 (1954).

STANDARD 11.5

CONVEYANCE OF LIMITED PARTNERSHIP REAL PROPERTY BEFORE DISSOLUTION

STANDARD: A CONVEYANCE OF LIMITED PARTNERSHIP REAL PROPERTY BEFORE PARTNERSHIP DISSOLUTION EXECUTED IN THE PARTNERSHIP NAME IS BINDING UPON THE PARTNERSHIP IF:

- (A) EXECUTED, AUTHORIZED OR RATIFIED BY ALL GENERAL PARTNERS; OR
- (B) EXECUTED BY ONE OR MORE BUT LESS THAN ALL GENERAL PARTNERS; AND EITHER:
 - (1) THE EXECUTING GENERAL PARTNER OR PARTNERS HAVE EXPRESS AUTHORITY TO MAKE THE CONVEYANCE; OR
 - (2) THE CONVEYANCE APPARENTLY CARRIES ON IN THE USUAL WAY THE BUSINESS OF THE LIMITED PARTNERSHIP AND THE GRANTEE DOES NOT HAVE KNOWLEDGE THAT THE EXECUTING GENERAL PARTNER OR PARTNERS ARE NOT AUTHORIZED TO MAKE THE CONVEYANCE;

SUBJECT IN ALL CASES TO THE RIGHT OF THE LIMITED PARTNERSHIP TO RECOVER TITLE IF THE CONVEYANCE WAS CONTRARY TO THE PARTNERSHIP AGREEMENT. TITLE DERIVED THROUGH A LATER CONVEYANCE TO A BONA FIDE PURCHASER FOR VALUE, HOWEVER, IS NOT SUBJECT TO RECOVERY BY THE PARTNERSHIP, EVEN IF EXECUTION OF THE INSTRUMENT OF CONVEYANCE WAS CONTRARY TO THE PARTNERSHIP AGREEMENT.

Problem A: Blackacre Plat was owned by Lion Associates Limited Partnership, a Michigan limited partnership engaged in the residential subdivision development business. On February 7, 1997, a deed to Harry Pitts describing Lot 6 in Blackacre Plat was executed on behalf of the partnership by Joe Woodward, a general partner. Woodward's execution

of the deed on behalf of the partnership was not expressly authorized (a fact of which Pitts did not have knowledge), nor was it contrary to the partnership agreement. Did Pitts acquire marketable title to Lot 6?

Answer: Yes.

Problem B: Tiger Limited Partnership, a Michigan limited partnership engaged in the manufacturing business, owned Blackacre, along with other real property. The partnership agreement provided that no conveyance of Blackacre was to be executed without the consent of the limited partners. On July 7, 2000, Guy Perry, in his capacity as the sole general partner, executed a deed describing Blackacre to George Williams. The limited partners had not consented to the conveyance. Did Williams acquire marketable title to Blackacre?

Answer: No.

Problem C: Same facts as in Problem B, except that on February 7, 2001, Williams, a single man, deeded Blackacre to Roger Bowman, a purchaser for value. Bowman was not aware that the deed to Williams was executed contrary to the partnership agreement. Did Bowman acquire marketable title to Blackacre?

Answer: Yes.

Authorities: MCL 449.9, 449.10, 449.1403 and 449.2106.

Comment A: The Michigan Revised Uniform Limited Partnership Act, effective January 1, 1983, provides: “Except as provided in this act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners”. MCL 449.1403.

Comment B: Partnership agreement, as used in this Standard, is defined in MCL 449.1101(10).

Comment C: Before January 1, 1983, the effective date of the Michigan Uniform Revised Limited Partnership Act, MCL 449.1101 *et seq.*, conveyances of real property of a limited partnership were governed by the Michigan Uniform Limited Partnership Act, MCL 449.201 *et seq.* (repealed by 1982 P.A. 213, being MCL 449.2104).

STANDARD 11.6

CONVEYANCE OF CO-PARTNERSHIP REAL PROPERTY SUBSEQUENT TO ASSIGNMENT OF PARTNERSHIP INTEREST

STANDARD: AN OTHERWISE BINDING CONVEYANCE OF CO-PARTNERSHIP REAL PROPERTY MADE IN THE PARTNERSHIP NAME IS NOT AFFECTED BY THE PRIOR ASSIGNMENT OF AN INTEREST IN THE PARTNERSHIP BY A PARTNER WHO WAS A PARTNER AT THE TIME THE PARTNERSHIP ACQUIRED THE PROPERTY IF THE ASSIGNMENT DID NOT CAUSE DISSOLUTION OF THE PARTNERSHIP OR THE PARTNERSHIP HAS NOT OTHERWISE BEEN DISSOLVED.

Problem A: Blackacre was acquired by Eagle Company, a Michigan co-partnership composed of Samantha Phillips, Janine Peters and Joan Pierce. Later, Phillips and Pauline Gibson entered into a written assignment pursuant to which Phillips assigned her economic interest in Eagle to Gibson, but Gibson was not substituted as a partner of Eagle in the place of Phillips nor was Gibson granted rights to participate in the management or administration of Eagle's business and affairs. After the assignment, Eagle conveyed Blackacre to Georgina Williams by a deed signed on behalf of Eagle by Peters. The Eagle partnership agreement required that all real property conveyances be approved in writing by all of the partners, and Williams had knowledge of this fact. The conveyance was authorized in writing by Peters, Pierce and Phillips, but not by Gibson. Did Williams acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Gibson, but not Phillips, authorized the conveyance in writing. Did Williams acquire marketable title to Blackacre?

Answer: No.

Authorities: MCL 449.9, 449.10, 449.27 and 449.29. *Backowski v Solecki*, 112 Mich App 401, 316 NW2d 434 (1982).

STANDARD 11.7

PARTNERS' AUTHORITY TO CONVEY CO-PARTNERSHIP REAL PROPERTY AFTER PARTNERSHIP DISSOLUTION

STANDARD: AFTER DISSOLUTION, A CONVEYANCE OF CO-PARTNERSHIP REAL PROPERTY SIGNED BY LESS THAN ALL OF THE PARTNERS IS BINDING UPON THE PARTNERSHIP IF:

(A) THE CONVEYANCE IS APPROPRIATE FOR:

- (1) COMPLETING A TRANSACTION UNFINISHED AT DISSOLUTION (EXCEPT IF THE PARTNERSHIP IS DISSOLVED BECAUSE IT IS UNLAWFUL TO CARRY ON ITS BUSINESS); OR**
- (2) WINDING UP PARTNERSHIP AFFAIRS; OR**

(B) (1) THE CONVEYANCE WOULD BE BINDING UPON THE PARTNERSHIP IF DISSOLUTION HAD NOT OCCURRED;

- (2) THE PARTNERSHIP IS NOT DISSOLVED BECAUSE IT IS UNLAWFUL TO CARRY ON ITS BUSINESS; AND**

(3) THE GRANTEE EITHER:

- (i) EXTENDED CREDIT TO THE PARTNERSHIP BEFORE DISSOLUTION AND HAD NO KNOWLEDGE OR NOTICE OF THE DISSOLUTION; OR**
- (ii) KNEW OF THE PARTNERSHIP BEFORE DISSOLUTION AND DID NOT HAVE KNOWLEDGE OR NOTICE OF THE DISSOLUTION AND THE FACT OF DISSOLUTION WAS NOT ADVERTISED IN A NEWSPAPER OF**

**GENERAL CIRCULATION IN THE PLACE
(OR IN EACH PLACE IF MORE THAN ONE)
AT WHICH THE PARTNERSHIP BUSINESS
WAS REGULARLY CARRIED ON;**

**PROVIDED, HOWEVER, THAT ACTS OF THE FOLLOWING
DESCRIBED PARTNERS WILL NOT BIND THE PARTNER-
SHIP:**

- (1) PARTNERS WHO HAVE BECOME BANKRUPT;
AND**
- (2) PARTNERS WHO HAVE NO AUTHORITY TO WIND
UP PARTNERSHIP AFFAIRS, EXCEPT THAT THIS
LIMITATION DOES NOT APPLY IF THE GRANTEE
EITHER:**
 - (i) EXTENDED CREDIT TO THE PARTNER-
SHIP BEFORE DISSOLUTION AND HAD NO
KNOWLEDGE OR NOTICE OF THE PART-
NERS' LACK OF AUTHORITY; OR**
 - (ii) DID NOT HAVE KNOWLEDGE OR NOTICE
OF THE PARTNERS' LACK OF AUTHORITY
AND THE FACT OF THE PARTNERS' LACK
OF AUTHORITY WAS NOT ADVERTISED IN
A NEWSPAPER OF GENERAL CIRCULATION
IN THE PLACE (OR IN EACH PLACE IF MORE
THAN ONE) AT WHICH THE PARTNERSHIP
BUSINESS WAS REGULARLY CARRIED ON.**

Problem A: Whiteacre was owned by Falcon Company, a Michigan co-partnership composed of Robert Smith, Thomas Jones and Edward Andrews. On May 1, 1999, Falcon entered into a binding purchase agreement to sell Whiteacre to Harvey Hansen. On May 30, 1999, the day before closing, Smith died. On May 31, 1999, the closing occurred as scheduled and in the manner required by the purchase agreement, at which time a deed conveying Whiteacre to Hansen was signed on behalf of Falcon by Jones. The conveyance of Whiteacre to Hansen was not appropriate for winding up the affairs of Falcon nor would

the conveyance have been binding upon Falcon if dissolution had not taken place. Did Hansen acquire marketable title to Whiteacre?

Answer: Yes. The deed to Hansen completed the transaction for the sale of Whiteacre, which was unfinished at the time Falcon was dissolved due to Smith's death.

Problem B: Same facts as in Problem A, except that Smith did not die and Falcon was dissolved because it was unlawful for Falcon to carry on its business. Did Hansen acquire marketable title to Whiteacre?

Answer: No.

Problem C: Same facts as in Problem B, except that the conveyance of Whiteacre to Hansen was appropriate for winding up the affairs of Falcon. Did Hansen acquire marketable title to Whiteacre?

Answer: Yes.

Problem D: Same facts as in Problem C, except that Jones had no authority to wind up Falcon's affairs. Did Hansen acquire marketable title to Whiteacre?

Answer: No.

Problem E: Same facts as in Problem D, except that Hansen extended credit to Falcon before Falcon's dissolution and had no knowledge or notice of Jones's lack of authority to wind up Falcon's partnership affairs. Did Hansen acquire marketable title to Whiteacre?

Answer: Yes.

Problem F: Same facts as in Problem E, except that Jones filed for bankruptcy the day before the scheduled closing. Did Hansen acquire marketable title to Whiteacre?

Answer: No.

Authorities: MCL 449.31, 449.33 and 449.35.

Comment: The Committee expresses no opinion as to who must consent to a conveyance of co-partnership real property if, before the conveyance, a partner sells his or her partnership interest to a third party (includ-

ing the partner's rights in partnership property and his or her right to participate in the management and administration of partnership business and affairs), the third party is admitted as a substitute partner in the co-partnership, and the business of the partnership is continued without liquidation of the partnership's affairs.

STANDARD 11.8

EFFECT OF STATUTORY CONVERSION OF PARTNERSHIP TO LIMITED LIABILITY COMPANY ON TITLE TO REAL PROPERTY

STANDARD: UPON CONVERSION OF A PARTNERSHIP TO A LIMITED LIABILITY COMPANY IN ACCORDANCE WITH MCL 450.4707, ALL INTERESTS OF THE PARTNERSHIP IN REAL PROPERTY BECAME VESTED IN THE LIMITED LIABILITY COMPANY.

Problem: Holmes & Sons, a Michigan co-partnership, owned Blackacre in fee simple. Holmes & Sons approved, executed and filed a certificate of conversion, together with articles of organization, to convert Holmes & Sons to Holmes & Sons, L.L.C., a Michigan limited liability company. No deed or other instrument of conveyance of Blackacre was given. Is fee simple title to Blackacre vested in Holmes & Sons, L.L.C.?

Answer: Yes.

Authority: MCL 450.4707.

Comment: The requirements for certificates of conversion are set forth in MCL 450.4707, and for articles of organization in MCL 450.4203. These provisions do not require that these documents, an instrument of conveyance, an affidavit or any other notice of the conversion be recorded.

